

No. 9/7/86-6Lab/1256.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Hindustan Sanitaryware and Industries Ltd., Bahadurgarh.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 191 of 1983

between

SHRI SHIV KUMAR, WORKMAN AND THE MANAGEMENT OF M/S HINDUSTAN SANITARYWARE AND INDUSTRIES LTD., BAHADURGARH

Shri B. S. Parbhakar, A. R. for the workman.

Shri C. M. Lal, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Governor of Haryana referred the following dispute, between the workman Shri Shiv Kumar and the management of M/s Hindustan Sanitaryware and Industries Ltd., Bahadurgarh, to this Court for adjudication,—*vide Haryana Government Gazette Notification No. 57787-92, dated 31st October, 1983.*—

Whether the termination of services of Shri Shiv Kumar is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner as made out from the statement of claim filed in the Court (because the demand notice is a cryptic one) is that he was employed with the respondent as a Motor Winder for the last about eleven years and he was drawing wages Rs. 680 p.m. on the date of his termination, because the respondent chose to terminate his services unlawfully on 25th October, 1982 on the basis of trumped up charges of rioting, insubordination and that his termination was brought about on account of his union activities, because he was Cashier of the Ceramic Mazdoor Sangh Union which had a sizeable following amongst the workers of the respondent concern, through the management was pampering a puppet union going by the name of Twyford Workers Union, whose functionaries were stooges of the management and that earlier also, in the year 1981, the petitioner was placed under suspension, which led to a settlement dated 22nd April, 1981 with the intervention of the Hon'ble Labour Minister, Haryana and the workman was reinstated and that on 23rd October, 1982 when annual prize distribution function had been organised by the respondent which was being presided over by Hon'ble Shri Shamsher Singh Surjewala, Minister of Irrigation and Power, the petitioner and his associates raised a peaceful protest to expose the nefarious designs of the office bearers of the Twyford Workers Union. This peaceful protest led to the issuance of a charge-sheet against the petitioner, into which, a farce of an enquiry was held and in holding the same, the Enquiry Officer flouted the principles of natural justice, because the petitioner was not given full opportunity of participation and furthermore the Enquiry Officer was biased against the petitioner. On the basis of these allegations, he has prayed that the order of dismissal passed against him was unlawful and liable to be set aside and as such, he has claimed reinstatement which continuity of service and full back wages. *Inter alia* it may be stated that alongwith the claim Statement the petitioner filed a plethora of documents, copies of which were not supplied to the management and so, the management filed an application that the petitioner be directed to furnish copies of the same before a detailed reply could be filed by the management. It is not on record, as to what order was passed by this Court on this application and it seems that the management filed a reply even without being supplied copies of the documents filed by the petitioner alongwith the Claim Statement.

3. In the reply filed by the respondent, preliminary objections taken are that the terms of reference are not happily worded, because the onus of proving the order of dismissal being unlawful should have been upon the petitioner and that since the petitioner was dismissed from employment after a proper domestic probe, this reference is not maintainable. On merits, it has contorted most of the allegations made in the Claim Statement, though it is admitted that a charge-sheet was issued to the petitioner on 25th October, 1985 for serious acts of gross misconduct and thereafter he was placed under suspension and a domestic enquiry was ordered. It is denied that any union of workers going by the name of Twyford Workers Union was constituted which was being staffed by henchmen of the management. Allegations of victimisation of the petitioner, his being a union activist, have also been denied. It is further denied that the workers of the respondent concern were fed up with the activities of the said union and as such, they were constrained to form another union going by the name of Ceramic Mazdoor Sangh in the year 1978. It is admitted that on an earlier occasion, a charge-sheet dated 16th April, 1981 was issued to the petitioner, as he was actively involved in damage/destruction of the property and physical assault on the staff of the respondent on the evening of 14th April, 1981 and there was wide coverage of the

said incident in the press. A settlement was forced upon the management on 22nd April, 1981 with the intervention of Shri Mehar Singh Rathi, the then Labour Minister, Haryana, who happened to have been elected to the Haryana Vidhan Sabha from Bahadurgarh constituency. Beside Shri Mehar Singh, Deputy Inspector General of Police Gurgaon range and Sub-Divisional Magistrate, Bahadurgarh, Labour Commissioner and Joint Labour Commissioner were also present on that occasion. As per the settlement suspension order against the workman was withdrawn but the management reserved its right to proceed against the workman in due course. It is further alleged that the charge-sheet dated 25th October, 1982 was a sequel to the most riotous and indisciplined conduct of the petitioner on the eve of annual games and sports prize distribution function where Hon'ble Shri Shamsher Singh Surjewala, Minister of Irrigation and Power Government of Haryana, was a chief guest and the situation created by the petitioner and his accomplice. Shri Chagan Singh would have led to complete chaos but for the timely intervention by the Police because at the venue of the function, beside the workers and staff of the respondent ladies and children were also present.

4. As regards allegation that the domestic enquiry was not conducted in accordance with the principles of natural justice, it is alleged that the petitioner was given full opportunity of participation, so much so, that he was allowed to cross-examine the witnesses examined by the management and was afforded assistance of a co-worker of his choice, though the petitioner of his own, choose to boycott the enquiry proceedings at the fag end without any lawful excuse. On these grounds, it is alleged that the order of dismissal passed against the petitioner was legal and justified and calls for no interference by this Court.

5. On the pleadings of the parties, the following issues were framed by me on 24th January, 1985 :—

1. Whether the reference is bad in law ? OPR.
2. Whether a proper and valid enquiry was held by the respondent before termination ? OPR.
3. Whether the termination of services of Shri Shiy Kumar is justified and in order ? If not, to what relief is he entitled ?

6. The management examined Shri Sudhir Chadha, Labour Law Consultant as MW-1, who was the Enquiry Officer and the workman appeared as his own witness as WW-1

7. I have heard Shri B.S. Parbhakar learned Authorised Representative of the workman and Shri C.M. Lal learned Authorised Representative of the respondent. My findings on the issues framed are as below :—

Issue No. 1

8. The learned Authorised Representative of the respondent Shri C.M. Lal addressed no arguments on this issue, and rightly so, because the present reference cannot be held to be bad in law on the ground that the reference has been made by the Government of Haryana regarding justifiability or otherwise of the alleged order of termination whereas actually the management passed an order of dismissal.

Issue No. 2

9. To prove this issue, the management examined Shri Sudhir Chadha, as MW-1, who stated that he was appointed as Enquiry Officer in this case,—*vide* order Exhibit M-1 and Exhibit M-2 is the copy of the charge sheet and that the petitioner was allowed full participation in the inquiry proceedings and also assistance of a co-worker and that he obtained the signatures of the petitioner on each date of hearing on the proceedings of that day and furnished the copies of the proceedings to the petitioner, who was allowed to cross-examine the witness of the management, which opportunity the petitioner availed of by putting the witnesses of the management to a gruelling cross-examination and that the entire proceedings were recorded in his hand, which are Exhibit M-3 pages 1 to 51 and Exhibit M-4 is the copy of the Standing Orders and its Devnagri transliteration is Exhibit M-4/1. Exhibit M-5, M-6, M-6/1 and Exhibit M-7 to Exhibit M-34 are the documents produced during the enquiry proceedings. When the workman appeared as WW-1, he mostly reiterated the allegations made in the Claim Statement and as such, I need not suffer repetition.

10. Shri Parbhakar learned Authorised Representative of the workman launched a frontal attack upon the validity of the enquiry proceedings by arguing that the Enquiry Officer, Shri Chadha was biased against the workman, being a professional, easily amenable to corporate pressure and so, he was acting during the enquiry proceedings at the behest of the management, in fixing the proceedings dates and in giving a twist to the statements of the witnesses of the management. He further contended that the petitioner was victimised because of his union activities as he was spear heading a campaign of justice to the workmen of the respondent concern, because the Twyford Workers Union was a puppet union in the hands of the management, whose office bearers were henchmen of the respondent.

11. In my opinion, on both these counts, the petitioner must fail. I have gone through the enquiry proceedings, copies of which, have been placed on record and also report of the Enquiry Officer Exhibit M-35 which runs into ten foolscap typed pages, in which the Enquiry Officer, who happens to be a Labour Law Consultant, has given a photographic account of the way, in which, the enquiry proceedings were conducted and has exposed the efforts made by the petitioner to stall the proceedings. He thrice adjourned the enquiry proceedings at the asking of the petitioner, and in my opinion, for no good reasons. Because of the rumblings raised by the petitioner, the Enquiry Officer has chosen to record the cross-examination of the witnesses of the management in a very cumbersome question answer form. The first date fixed by him was 29th November, 1982 but the proceedings were adjourned to 17th December, 1982 at the asking of the petitioner, on which date the petitioner did not appear for no valid reason and the Enquiry Officer adjourned the enquiry proceedings in spite of protest by the management to 14th December, 1982, and duly informed the petitioner of the next date fixed. On 14th December, 1982 the petitioner appeared but not his Authorised Representative on the flimsy ground that he has sent a letter to the Enquiry Officer on 4th December, 1982 seeking adjournment of the proceedings beyond 17th December, 1982. Even then, the Enquiry Officer adjourned the proceedings to 18th December, 1982 in the interest of justice. On 18th December, 1982 the petitioner appeared alongwith his representative Shri Rang Bahadur and statement of witnesses recorded and the proceedings were adjourned to 20th December, 1982, on which date also some proceedings were recorded and the same were adjourned to 27th December, 1982, on which date, the petitioner raised objection to the Enquiry Officer even asking the witness to disclose his identity which objection was over ruled by him and the proceedings were adjourned to 30th December, 1982, on which date, the petitioner of his own walked out from the enquiry proceedings, stating that he was no longer interested in participation in the same and under these circumstances, the Enquiry Officer was constrained to record the statements of two witnesses of the management on the said date at the back of the petitioner and thereafter he submitted his detailed findings to the management. The Enquiry Officer has made a very correct and searching appraisal of the evidence produced during the enquiry proceedings and thereafter submitted his findings, holding the petitioner guilty of riotous conduct, insubordination, indiscipline and inciting other workmen against the management. Simply because Shri Chadha happens to be a Labour Law Consultant, does not go to show that he was biased against the management, though he might have conducted domestic probe concerning workmen of the respondent concern on earlier occasions also. If Shri Chadha the Enquiry Officer erred, he erred on the side of leniency towards the workman and not that he was in any way acting at the behest of the management. He adjourned the enquiry proceedings thrice on the request of the workman, though he was not bound to do so. He choose to unnecessarily adopt the cumbersome procedure of recording cross-examination of the witnesses of the management in the question answer form probably to please the petitioner, who was out to stall the enquiry proceedings on one pretext or the other, just to keep the issue of his suspension alive.

12. The law is settled that the onus of establishing a plea of victimisation is upon the person pleading it, which has to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. The law is also settled that once the Court finds that the misconduct is established as required on legal evidence in a fairly conducted domestic enquiry, the plea of victimisation will not carry the case of the employee any further because a proved misconduct is antithesis of victimisation as is understood in industrial relations.

13. The case of the petitioner is that he was a Treasurer of the rival Ceramic Mazdoor Singh, a union of the workers of the respondent concern. In spite of the best efforts made by the Court and the learned Authorised Representative of the workman, during the course of arguments, it could not be established from any record or evidence as to what was the strength of following of the said union amongst the workers of the respondent concern. Simply because the petitioner assumed the airs of a ring union leader, he had no business to mouth filthy language towards office bearers of Twyford Workers Union, who were sitting on the dias alongwith the Chief guest on the eve of annual games and sports prize distribution function. Let us assume for the sake of arguments that this union i.e. Twyford Workers Union was being manned by stooges of the respondent management, even then, the petitioner had no business to hurl abuses at the office bearers of the said union seated on the dias alongwith the chief guest. It seems that the petitioner was emboldened in his violent activities because of his earlier nefarious activities in the year 1981, which received wide reportage in the press and the respondent and its other sister concern suffered huge loss in person and property, and he escaped unscathed because of the intervention of political bigwig whose patronage he enjoyed and the management was forced to purchase industrial peace by revoking the suspension order passed against the workman and others, though the management kept the issue of disciplinary action against the petitioner alive but was not allowed to hold a probe into the same, because of the pull the petitioner enjoyed with the local politicians, one of whom happened to be the Labour Minister, Government of Haryana whose displeasure the respondent could ill afford to incur.

14. In the last resort, Shri Parbhakar learned Authorised Representative of the petitioner took shelter behind the principles of natural justice, which according to him were flouted in holding the enquiry proceedings. It has been held in AIR 1966, Madhya Pradesh 136 between Rajinder Kumar, versus Vice Chancellor Vikram University and others that what is required to adhere to the principle of "Audi Alteram Partam" is only a fair opportunity to the delinquent employees to state his case and to prove his innocence. If after such opportunity, the person concerned does not avail of it and if the conclusion is against him, it cannot be said that the principles of natural justice are violated. The concept of natural justice is a magnificent thoroughbred which must not be allowed to turn into

a wild and unruly horse, careering off where it hits, unsaddling its rider and bursting into the fields where the sign "no passage" is put up. If the petitioner walked out of the enquiry proceedings at the fag end of his own choice, no fault can be fastened upon the Enquiry Officer, who all through has been most considerate in affording maximum accommodation to the petitioner. So, it cannot be argued on behalf of the petitioner that the principles of natural justice were flouted in holding the enquiry proceedings.

15. So, there is no difficulty in holding that the enquiry held in this case was fair and proper and in holding the same, the Enquiry Officer strictly adhered to the principles of natural justice and did not commit any procedural irregularity, which may vitiate the enquiry proceedings. So, this issue goes against the petitioner.

Issue No. 3

16. The learned Authorised Representative of the workman forcefully pleaded that a lilliputian workman is arrayed against a corporate giant and so, interference by this Court against the order of dismissal is called for. Earlier there was divergence of judicial opinion regarding the powers of the Tribunal/Court to interfere with the findings of the Enquiry Officer, in case, the same were conducted within four parameters of the principles of natural justice and no procedural irregularity was committed in holding the same by the Enquiry Officer, but the judicial canvass has ceased to be fuzzy on this point after the incorporation of section 11-A in the said Act by the amending Act 45 of 1971 with effect from 15th December, 1971. This section enables the Labour Court to set aside the order of discharge or dismissal passed by the management and direct reinstatement of the workman on such terms and conditions as it thinks fit or to give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require, if it is satisfied that the Order of discharge or dismissal was not justified. Viewed from this yard stick, in my opinion, the proved allegations against the workman are of such a serious nature that his reinstatement would amount to saddling the management with a person, who has scant regard for discipline or decency. In the year 1981 this workman alongwith others indulged in acts of vandalism which put the respondent to great loss in person and property but the management was constrained to hold its hand on that occasion because of the political patronage enjoyed by the petitioner. His proved misconduct, into which, a fair and domestic probe was held and in which he was found guilty, was of such a nature that the same was subversive of industrial discipline. This Court cannot countenance a situation to be created by the working class, where a unit is forced to be closed down, because in that case, the corporate giant, which usually feeds on public institutional funds, may lose, a few thick layers of the butter but the poor working class lose their livelihood. People are known to survive without butter but not without bread—and in our motherland millions do. Under these circumstances, no interference by this Court under section 11-A of the said Act is called for. The workman is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

Dated the 28th January, 1986

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court Hisar.

Endst No. 191-83/178, dated the 3rd Febrary, 1986

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 Industrial Disputes Act, 1947.

B.P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court Hisar.

No. 9/7/86-6Lab/1257.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. T.I.T. Mills, Birla Colony, Bhiwani.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 154 of 81

between

SHRI RAM LAL RAJGARHIA, APPLICANT AND THE MANAGEMENT OF M/S. T.I.T. MILLS, BIRLA COLONY, BHIAWANI

Present

Shri S.S. Gupta, A.R. for the applicant.

Shri B.R. Ghaiye, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), the Governor of Haryana, referred the following dispute between the applicant Shri Ram Lal Rajgarhia and the management of M/s. T.I.T. Mills, Birla Colony, Bhiwani, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/HSR/136/81/59162, dated 10th December, 1981 :—

Whether the termination of service of Shri Ram Lal Rajgarhia was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner as made out from the claim statement is that he had been working with the respondent with blemishless record of service for the last about thirty-two years and was designated as Joint Store Keeper, though he was performing the duties of clerical nature and that the management choose to terminate his services unlawfully,—*vide* its letter dated 15th November, 1981 without assigning any reason and that the said act of the management is a colourable exercise of power by picking, choosing and throwing out of employment, at will of the employer, because the workmen junior to the petitioner were retained in employment and as such, his termination squarely falls within the ambit of term "retrenchment" as defined in section 2(oo) of the said Act, without complying with the mandatory provisions of the said Act, and as such, the order of termination is absolutely arbitrary, capricious and so, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the petitioner is not a "workman" as defined in section 2(s) of the said Act, because the petitioner was discharging the duties of supervisory and administrative nature in the store department, where he was employed as Joint Store Keeper for the last about more than fifteen years. *Inter alia*, it is alleged that increments and other perks of employment regulating the administrative and supervisory staff of the respondent were availed of by the petitioner. Detailing duties, performed by the petitioner during the tenure of employment, it is alleged, firstly, that the respondent has got a fullfledged stores department entrusted the duties of store purchase and store maintenance in which, at the relevant time, nearly twenty clerks and fifteen coolies were working and control and functioning of the said department was being supervised by the Store Keeper and the Joint Store Keeper jointly and individually, who both exercised administrative and supervisory powers. Secondly, that the petitioner was handling and looking after open marine insurance and signing correspondence, because no clerk can be entrusted with such work, which involves heavy encumbrance on the assets of the respondent company. Thirdly, the petitioner has been regularly imparting instructions to the employees of the store department regarding quality of store to be purchased and lower cadre jobs used to be performed by the employees working under him and was also assigning instructions regarding purchase of store material after verification of rates from different suppliers, whose bills were received by the petitioner, who after verifying their genuineness approved the same for final payment. It is also alleged that assignment of work, their employment or termination including coolies on temporary basis rested with the petitioner. On these various grounds, it is alleged that by no stretch of imagination can it be inferred that the petitioner was a "workman" as defined in section 2(s) of the said Act.

4. On merits, employment of the petitioner as Joint Store Keeper is admitted but rest of the allegations have been controverted and that the services of the petitioner were simply dispensed with and as such, the management was not bound to assign any reason for the same and since the petitioner is not a "workman" as defined in section 2(s) and provisions of section 25F of the said Act are not attracted in his case. On these various grounds, it is prayed that the reference be returned against the petitioner.

5. In the replication filed by the petitioner, various pleas taken by the respondent have been controverted and veracity of the allegations made in the Claim Statement asserted.

6. On the pleadings of the parties, the following issues were settled for decision on 6th September, 1982 :—

(1) Whether the applicant is a workman under section 2(s) of the I.D. Act ?

(2) Whether the termination of services of Shri Ram Lal Rajgarhia was justified and in order ? If not, to what relief is he entitled ?

7. Subsequently the respondent filed an application for amendment of the reply. The same was allowed and resultantly the following additional issue was framed on 8th April, 1983 :

(3) Whether this Court has no jurisdiction to try the present reference as per reason given in para 4(A) of the amended application dated 23rd February, 1983 ?

8. Initially issue No. 1 was being tried as preliminary issue and at the fag end of the trial this Court on the basis of dictum laid down in AIR 1984 S.C. 153 between J. P. Maheshwari *versus* Delhi Administration and others ordered that all the issues should be tried together and as such, both the parties were given fresh opportunity to lead evidence on remaining issues, which they did.

9. In support of his claim, the petitioner appeared as WW-1 and the management examined MW-1 Shri Jagdish Chander, Store-keeper, MW-2 Shri N.M. Jain, Factory Manager, MW-3 Shri Ram Kumar, Coal Coolie, MW-4 Shri Tata Chand, Store Clerk and MW-5 Shri Partap Singh one time employed as Carpenter with the respondent. Beside oral evidence a plethora of documents have been placed upon the file by the respondent.

10. The learned authorised representatives of the parties heard. My findings on the issues framed are as below :

Issue No. 1 :

11. The term "workman" has been defined in section 2(s) of the said Act as under :—

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

12. To prove the fact that he was employed as a "workman" simpliciter, the petitioner when he appeared as WW-1 stated that he was employed with the respondent in the year 1948 as a Clerk and his services were terminated in the month of November, 1980, when he was employed as a Clerk in the Store Department, though the management had designated him as a Joint Store-keeper. He further stated that Store Superintendent was Shri R.C. Gaur and Shri Mitra Sen was Store-keeper and that he was drawing a salary of Rs. 850/900 on the eve of his termination exclusive of dearness allowances and that he had no power of appointment or dismissal, sanction or recommending of leave or take any disciplinary action, nor any power to assign duties to the employees of the Store Department and that he used to prepare indents for supply of store items and that the indents books are in his hand and that he used to do other duties as assigned to him by the management and that Ex. W-1 to W-11 are photostat copies of the various orders/instructions given/issued to him by officers of the respondent and that he used to prepare comparative table of the prices quoted by various suppliers and Ex. W-12 is a copy of the same and that he used to fill up the prices of the store items purchased by the respondent company in the order book, copies of which are Ex. W-3 to W-21 and that there were three indent Clerks in the store department to whom duties used to be assigned by the Store-keeper. Denials made by him in his cross-examination, I shall discuss at the appropriate stage. On the other hand, to disprove the fact that the petitioner was not employed as "workman", the management examined MW-1 Shri Jagdish Chander Sharma, Store-keeper, who stated that he was working with the respondent as a Store-keeper since December, 1979 and that besides him three/four officers and twenty clerks in the said department and that the applicant was employed as Joint Store-keeper on a salary of Rs. 1,337 p.m. (nor denied by the petitioner when he appeared again on the remaining issues on 7th October, 1985, rather he stated that his total emoluments were Rs. 1,350 p.m.). He further stated that besides clerical staff, there were seventeen store and coal coolies and besides that the said department used to employ casual workers as the exigencies of the work-load required and that all the articles of the mills except the raw material used to be handled by the store department where the applicant joined as Joint Store-keeper in the year 1960, whose duties were supervisory in nature, because he used to look after store articles and supervise the working of the staff posted in the store department and besides that the petitioner used to look after the machines and machinery parts independently and also correspondence with the suppliers regarding purchase of store items and also handle the marine-insurance work and that the prices of the machinery proposed to be purchased used to be settled by the petitioner after preparing a comparative chart in consultation with the respondent and that prior to 1977 there was no post of Store Superintendent in the said department and that in the absence of the Store-keeper, the petitioner used to function as such, because Shri Mitter Sain, Store Keeper was sent on deputation to Calcutta for two years and in his absence, the petitioner performed the duties of Store-keeper, because it was he, who used to sanction leave of the employees and to recruit casual labour and performed other related functions. MW-2 Shri N.M. Jain, Factory Manager, stated that the petitioner was employed as Joint Store-keeper since 1960 and that the pay scales of the clerical staff of the respondent institute were fixed as per the award of the Industrial Tribunal and Textile Wage Board award and that the scale of the petitioner was not fixed in the clerical cadre, who used to be granted increments

on *ad hoc* basis. Statement of the same is Ex. MW-2/1. Copy of the award given by the Tribunal is Ex. MW-2/2 and that the applicant used to sign separate register maintained for officers of the company and that as per the rules of the respondent, the applicant used to travel by 1st class Rail and even by Air when he used to be on official duty. Bills passed in that behalf are Ex. MW-2/4 to MW-2/21 and that the applicant used to sign correspondence on behalf of the respondent, copies of the same are Ex. MW-2/22 to MW-2/38. He also stated that the duties of the petitioner were of supervisory and administrative nature. MW-3 is Shri Ram Kumar, Coal Coolie, who stated that he was working with the respondent as a Coal Coolie in the Store Department since the year 1979 and that his duties are to see proper loading of the coal and that there are about twenty Coal Coolies in the Store Department, whose duties used to be assigned by the applicant, under whose orders additional Coal Coolies could be employed, if the work-load required and that the Coal Coolies used to take permission from the petitioner or Shri Mittar Sain for proceeding on leave, MW-4 is Shri Tara Chand Sharma, Store Clerk. He stated that he was employed with the respondent since October, 1945 and the petitioner was employed as Joint Store-keeper in the Store Department. His duties were of supervisory nature, because he used to dictate correspondence of the Store Department and look after the insurance work and placing of indents for purchase of store articles was within the discretion of the petitioner, who used to look after the railway claim work besides marine insurance work and that the store department used to handle purchase of store articles worth Rs. ten lacs every month and that the clerical duties of the petitioner hardly lasted for about one hour daily and that the petitioner used to sanction leave to the employees of the said department. MW-5 Shri Partap Singh stated that he was working as a Carpenter in the Store Department of the respondent since the year 1977 and that besides him, one more carpenter, two blacksmiths, seven-eight clerks worked in the said department and some other employees and that they used to do the work of packing under the orders of the applicant, who used to employ workers on *ad hoc* basis also and sanction leave.

13. Before giving findings as to whether the petitioner is a "workman" or not, I deem it proper to clear the precedential deck on the point. From the various authorities cited on behalf of the parties, certain crystal clear points emerge. The Courts have held that while deciding the fact as to whether an employee is a "workman" or not under section 2(s) of the said Act, focus has put on the nature of primary, basic or dominant duties being performed by the employee, whose status is under scrutiny. It has further been held that the Court is not to be carried away by alluring appellation, glorified designation or high sounding nomenclature of the employee, which are sometimes given by the management to boost the ego of the employee. It has further been held that sometimes stray assignments are made by the employer to create confusion and the Courts should refuse to fall in such traps. It has further been held that while giving findings on such facts, the Court should not be oblivious regarding the nature of the industry, type of work in which the employee is engaged, organisational set-up of the particular unit of industry and like factors.

14. The aforesaid legal position permeates through the various authorities cited or relied upon by the parties. On behalf of the petitioner reliance was placed upon 1961 (II) LLJ 117 between Andhra Scientific Company Ltd. and Seshagiri Rao (A) and another; 1964 LLJ (I) 556 between the workmen of Macfarlane and Co. Ltd. and Fifth Industrial Tribunal and Others, 1961 (I) LLJ 18 between Lloyds Bank Ltd. and Panna Lal Gupta and others, 1977 (II) LLN 517 between Mathur Aviation and Lt. Governor Delhi, 1954 (II) LLJ 155 between Burma Shell Oil Storage and Distribution Company of India Ltd. Madras and Labour Appellate Tribunal of Area and two others, 1969 (II) LLJ 670 between Anand Bazar Patrika (P) Ltd. and its workmen, 1981 (14) Lab. I.C. 1439 Rajendra Singh versus State of U.P. and others, 1981 (II) LLN 569 between Beco Engineering Co. Ltd and State of Punjab and others, 1984 (17) Lab. I.C. 658 between Ved Parkash Gupta versus M/s Delton Cable India (P) Ltd., 1983 Lab. I.C. 1483 between S.K. Verma versus Mahesh Chandra and others, 1985 Lab. I.C. 1008 Arkal Govind Raj Rao versus Ciba Geigy of India Ltd., Bombay, 1985 Lab. I.C. 810 between Sant Raj and others versus O.P. Singla and others.

15. On the other hand, on behalf of the respondent reliance was placed upon a beaddrill of authorities reported in 1970 (II) LLJ between Burma Shell Oil Storage and Distribution Company of India Ltd and Burma Shell Staff Association and others, 1975 II LLN 88 between Ramendra Narayan Deb and Eighth Industrial Tribunal and others, 1965-66 (28) Indian Factories Journal 394, All India Reserve Bank Employees Association and another versus Reserve Bank of India and another 1968 (I) Lab. I.C. 326 between U. P. Electric Supply Company Ltd versus H.V. Bowen and another, 1974 (29) Indian Factories and Labour Reports page 325 between Management of Sonidia Potteries (P) Ltd. and B.D. Gupta and others.

16. From the plethora of authorities cited at the bar by both the sides, I propose to discuss and distinguish the latest and most authoritative on the question in controversy handed out by the Hon'ble Supreme Court of India, one of which is 1985 Lab. I.C. 1008. The facts of the case are that the employee was working as Stenographer-cum-Accountant. His duty was checking bank reconciliation beside other duties, such as putting up indents for printed stationery, directing other clerks to take note of certain documents and report them to him. In this situation, their Lordships held that these duties cannot be said to be managerial or supervisory in nature. In the other case reported in 1983 Lab. I.C. 1483 the petitioner was employed as Development Officer in the Life Insurance Corporation. His duties were to assist and inspire the agents after recruiting them and to render post-sale service to policy-holders. He had no authority to appoint agents or to take disciplinary action against them. He even did not supervise the work of agents, though he was required to train them and assist them. He was to be the friend, philosopher and guide of the agents working within his jurisdiction and

no more. Under these circumstances, the Hon'ble Supreme Court upsetting the award of the Industrial Tribunal and set aside the findings of the Hon'ble High Court of Delhi remitted the case to the Tribunal for disposal according to law.

17. Certain salient facts stare out from the oral and documentary evidence adduced by the respondent to bring the petitioner out of the ambit of the term "workman" as defined in section 2(s) of the said Act. The same are photostat copies of the correspondence, which the petitioner was doing with the various firms/concerns/companies on behalf of the respondent. Here are some letters admittedly written by the petitioner under his signatures on behalf of the respondent company, to show the sweep, extent, their tune and commanding tenor.

Ex. M-2 letter, dated 3rd September, 1980

M/s. S.G. Soparia Company,
Opp. Khokhfi Masjid,
Mahuva (Saurashtra).

Dear Sirs,

Re: Our Order No. 10/23 dated 8th July, 1980 and your bill No. B/25/36, dated 31st July 1980 for the supply of Bundle Banding.

We are in receipt of your letter No. P/553/36/28 dated the 18th August, 1980.

You have quoted Rs. 16 per K.G., vide your letter No. P/485/36, dated 17th July, 1980 for Bundle Banding and accordingly, we placed our order with you. We explained everything in our letter No. ST/95/4425/17903, dated 11th August, 1980. We do not know on what ground we can pass your bill @ Rs. 18 per Kg. When you have quoted Rs. 16 per Kg. and we have placed the order accordingly, we are sorry we cannot help as it is against business principles. Please note that we are passing your bill @ Rs. 16 per Kg at which the order was placed. Please arrange to despatch balance quantity i.e. 320 Kg.

Please send us your present lowest rates for different quality mentioning detailed particulars i.e. count of yarn, ply and No. of ply, etc. together with their samples.

Thanking you,

Yours faithfully,
Sd/-

for the Technological Institute of Textiles,
Stores Superintendent.

Ex. M-3 letter, dated 4th September, 1980

Shri T. P. Sreedharan,
7-1, Dr. Radhakrishnan Road,
Tatabad,
Coimbatore.

Dear Sirs,

Re: Our Order No. Spg B/135/XF, dated 19th July, 1980.

We have already requested you to treat our above order for Cots as cancelled. We may again write to you that we do not require the Cots at all. Please do not make any despatch, we shall not be able to accept them. If you will be despatching, you will be doing so at your cost and responsibility which please note.

We find that you have been drawing documents through bank. We never agreed to make payment through bank. The documents negotiated by you through bank standing in the bank should be got delivered to us free of payment and to this effect please write to the Banker concerned under copy to us so that the wharfage on the consignments may be avoided. Please note in case any consignment will incur any wharfage, it will be in your account.

Thanking you,

Yours faithfully,
Sd/-

for Technological Institute of Textiles,
Stores Superintendent.

c.c. Kesorishih Vallabhdas,
Rumalingam Road (West)
P.O. No. 1017, R.S. Puram P.O.
Coimbatore 641002.

Ex. M-4 letter, dated 4th September, 1980

M/s Nagpal Textiles Traders,
7326, Prem Nagar, Subzi Mandi,
Near Birla Mills, Delhi-110007.

Dear Sirs,

We are sending herewith a G.R. No. 6860, dated 27th August, 1980, containing one case rejected shuttles.

We had returned these shuttles but you have despatched them again. We make all purchases subject to approval. These shuttles are not giving even two days life and there is no question of accepting them back. We have already debited to your account with the cost of these returned shuttles. Please accept them back if you want to maintain our business relations with you. We could have used since the goods are very poor and are not giving two days life. They have been rejected and it is a waste for us. Please note that in case, you will return them back, we shall not be able to take delivery of the goods from the Carrier and they will remain lying with them at your cost and responsibility. You are a Manufacturer and Suppliers and there are many valued Mill clients on your list and you may please supply to any of them. However, as a special case, the expenses incurred by you may please be debited to our account and a debit note be sent to us to this effect.

Thanking you.

Yours faithfully,

Encl.

Sd/-

for the Technological Institute of Textiles.
Stores Superintendent.

Ex. M-11 letter, dated 19th September, 1980

M/s. Avan Agencies,
C/o Gunvant Mangaldas,
Viben, Shahibaug, Ahmedabad.

Dear Sirs,

*Re : Dimensions of Floating Expanding Device. M/s. Kiran Purchase order No. GOE: 2204D : TIT :
DIE-24 : 402, dated 5th July, 1980 for Rubber Sleeves Expander and Floating expanding device
2 sets each.*

We thank you for your letter No. AVS-U55/8/11, dated the 8th August, 1980.

We knowingly delayed to send you the dimensions of S.S. Floating Expanding Device etc. We do not understand how M/s. Kiran Investment Co., Ahmedabad has informed you that our requirement is urgent. If our requirement had been urgent, we would have approved the dimensions and send you earlier. The matter has been receiving our consideration and attention. We have received your set of drawing giving the dimensions.

We are sorry to write that due to some immediate change in our programme, we do not require the above goods. Kindly treat our order as cancelled and arrange early refund of Rs. 10,500 paid to you against advance. We are sorry for the inconvenience caused to you in this particular instance. However, we assure that we are keeping this matter pending for a few months and as soon as the matter comes to a final stage we shall be glad to reinstate the order renewed but just it will take sometime and, therefore, the advance given to you should be refunded immediately because our Internal Auditors also object to such advance/outstanding advance account.

Thanking you.

Yours faithfully,

Sd/-
for Technological Institute of Textiles.

Ex. M-17 letter, dated 21st September, 1980

M/s. Miltex Engineering Works,
Haripura, Asarwa,
Ahmedabad—380016.

Dear Sirs,

We thank you for your letter No. H/MEW/533, dated the 6th September, 1980 giving herein all pending list of our spare parts.

We find from the column of remarks that you have not received the sample and there is no question of starting their manufacturing. Please cancell all the order as mentioned in your letter under reference and send us your cancellation confirmation.

Thanking you,

Yours faithfully,

(Sd.)

For The Technological Institute of Textiles,
Stores Supt.

c.c. M/s Kiran Investment Co.,
Ahmedabad.

Ex. M-19 letter, dated 21st September, 1980

M/s. Indequip Engineering Ltd.,
Near I.T.I., Naroda,
Ahmedabad.

Dear Sirs,

Re : Despatch of spares for Warping Machine under your Goods Despatch Note No. Misc/104/80, dated 22nd August, 1980.

With reference to the above, we are sorry to write that the spare parts as per your confirmation letter No. 605/79, dated 24th December, 1979 were to be despatched within four weeks after receipt of advance. The advance was sent to you, —vide our cheque No. 25516, dated 10th January, 1980 for Rs. 300 along with our letter No. ST/38/9998/50099, dated 10th January, 1980. You have made supply after more than about 20 weeks. Since our requirement has been very urgent, we have to procure the spare parts from other sources to keep the machine running. We now do not require them. Now we are arranging their return drawing documents for the amount drawn on us through Bank of India. Please retire as soon as the documents are presented. We are not happy to take this action but we had to do it as you made inordinate delay in executing the order. The delay of one week or so can be tolerated but more than 20 weeks cannot be. We hope you will accommodate our request and have no objection in accepting the small consignment and sending it to some of your other mill clients.

Thanking you,

Yours faithfully,

(Sd.)

For The Technological Institute of Textile.

c.c. M/s. K.S. Co.
Ad.

Ex. M-20 letter, dated 21st September, 1980

M/s. Bhatt Brothers,
Industrial Estate Nagarvel Hanuman Road,
Amaraiwadi,
Ahmedabad.

Dear Sirs,

We are in receipt of your letter, dated the 10th September, 1980.

We find that you have despatched 100 pcs 18 pickers under your bill No. 178/r/80, dated 8th September, 1980 and drawn documents through bank. In this connection, we are to inform you that we have already got our order for these pickers cancelled. We do not understand how you have arranged their despatch. We cannot retire the documents, please ask the carrier to reback the consignment to your place. Please note that the goods will be lying at the Carrier at your cost, risk and responsibility.

Thanking you,

Yours faithfully,

(Sd.)

For The Technological Institute of Textiles,
Stores Supt.

c.c. K.S. Co.
Ad.

Ex. M-26 letter dated 20th October, 1980

M/s. Kamal Industries,
Nobles 'A' Building, 3rd Floor, Ashram Road,
Ahmedabad—380009.

Dear Sirs,

Re : 10a x 27g x 355 R Wire Healds supplied by you under your bill No. 236, dated 6th August, 1980.

We thank you for your letter No. KI/ARM/0439/80, dated the 3rd October, 1980.

We do not understand what do you mean 'Everything must have been settled as M/s. Ajay Textile Agency must have contacted us'. How do you expect from us to pass your bill @ Rs. 115.00 per 1000 pcs even when at the time of placing your supply the rate of key brand wire healds was Rs. 95.00 per 1000 pcs. The rates of other manufacturers are always Rs. 15.00 lower than key brand, i.e., your rates should be Rs. 80.00 per 1000 pcs. You might have printed price-list. Please send us a copy of the printed pricelist. We cannot pay any rate written by M/s. Ajay Textile Agency as at the time of placing order firstly no rate was settled and secondly the goods were to be supplied from Delhi stock which the party failed to supply. We are even not supposed to accept these goods as the order was secured by Delhi party on fictitious grounds. If you like we can make payment @ Rs. 80.00 per 1000, pcs otherwise, we shall arrange return of goods.

Thanking you,

Yours faithfully,

(Sd.)

For The Technological Institute of Textiles.

c.c M/s Ajay Textile Agencies,
7326, Prem Nagar (Near Birla Mills),
Delhi.

Ex. M-29 letter, dated 23rd October, 1980

M/s. Central India Machinery Mfg. Co. Ltd.,
80, Swami Vivekanand Road,
Jogeshwari,
Bombay—400102.

Dear Sirs,

Reg : 15½ Auto Loom Shuttles Centre Threading.

We note the contents of your letter No. SF/6/1127/80, dated 12th October, 1980.

Recently, Syt Anandilalji Roongta was here and the matter was discussed with him and he informed us that Mr. Tandon is expected here shortly. We have few problems which we would like to discuss with him. Kindly send him at the earliest so that all the pending matters can be discussed across the table and decided.

Thanking you,

Yours faithfully,

(Sd.)

For The Technological Institute of Textiles.

Ex. M-30 letter, dated 25th October, 1980

M/s. Sodhi Transport Co.,
Halu Bazar,
Bhiwani.

Dear Sirs,

The two cases lying with you despatched by M/s. Manchester Machinery and Sizing Suppliers under your MR Nos. 507591, and 509230 dated 12th July, 1980 and 24th July, 1980 respectively may kindly be returned to the party immediately as we will not accept this consignment.

Thanking you,

Yours faithfully,

(Sd.)

For Technological Institute of Textiles.

Ex. M-32 Letter, dated 27th October, 1980

M/s. National Insurance Co. Ltd.,
Division No. IV,
21, Darya Ganj,
New Delhi-110002.

Dear Sirs,

Our suppliers M/s. New Standard Engineering Co. Ltd., have despatched one case containing 1 No. hotocell with light sources (brand new machinery part) for blowroom under Kew Suraj Transport Co. GR No. B-625874, dated 18th October, 1980 ex-Bombay to Bhiwani.

Kindly insure the consignment for Rs. 1,400.00 against all transit risks.

Thanking you.

Yours faithfully,

(Sd.)

for Technological Institute of Textiles.

c.c. M/s. New Standard Engg. Co. Ltd.

NSE Estate, Gurgaon East,
Bombay 400063 with ref. to his letter No. TMD, Sp, dt. 21st October, 1980.

Ex. M-34 letter dated 27th October, 1980

Shri Jagdish Chander Sharma,
Room No. 13
Hotel Palace,
Gadolia,
Varanasi (U.P.)

Please send three/four copies of Analysis Report of Jayant Colliery coal. It is URGENT.

(Sd.) R.L. RAJGARIA,

For Technological Institute of Textiles.

Ex. M-42 letter, dated 28th October, 1980

M/s. Central India Machinery Mfg. Co. Ltd.,
(Shuttle Factory),
80, Swami Vivekananda Marg,
Jogeshwari,
Bombay.

Dear Sirs,

We thank you for your kindly converting 12 pcs of 14½" peeler type shuttles into plain shuttles. We find that the modification/rectification carried out by you appears to be all right except little more modification for which we are writing to you in detail shortly. We are grateful to you for the co-operation and technical understanding extended in this particular instance and we hope similar co-operation and technical understanding will be extended for conversion of 15½" Jaw type shuttles into Auto shuttles as per our suggestion of course subject to your change being a being manufacturer of shuttles.

Thanking you.

Yours faithfully,

(Sd.)

for Technological Institute of Textiles.

Letter dated 18th April, 1974

M/s. kimpson & Munro (India) Pvt. Ltd.,
4, Lyons Range,
Calcutta-1.

Dear Sirs,

We thank you for your letter No. ECB/177/26/74, dated 8th April, 1974 confirming our order, for Cone Drum belts. The size of 2220 mm x 50mm is alright. But the size of 50 mm x 48" is wrong. In other MMC speed Frames belts in this size may be used but we have received MMC latest Speed Frame wherein the size of the belt is 750 mm x 50 mm. We have again measured and found that this size is in order. Please supply us 6 Endless cone drum belt in 750 mm x 50 mm size and not in the size mentioned by you.

As desired by you, we are sending herewith our cheque No. 250658 dated 16th April, 1974 for Rs. 275 towards approximately 25% advance and request you to kindly negotiate the documents for the balance amount through United Commercial Bank, Bhiwani. Please charge us 3% C.S.T and we shall submit 'C' form. Our C.S.T. registration No. is CST-HIS-26.

Please do not despatch goods by road transport as we have experienced that goods despatched by road do not reach us for months together. They must be despatched by passenger train only.

Yours faithfully,

(Sd.)

for Technological Institute of Textiles.

Encl.

cc. Mr. Amarnath Goel,
Calcutta.

Letter dated 11th November, 1975

M/s. Central India Machinery Mfg. Co. Ltd.,
Birlanagar,
Gwalior-474004.

Dear Sirs,

Kind Attention Shri A.K. Bajoriaji.

This has reference to your letter No. S1s (Wdg) dated 9th November, 1975 addressed to Shri Pushkarduttji. He is at Bombay.

We have purchased machine on last terms and conditions and accordingly we are sending herewith our cheque No. 090638 dated 11th November, 1975 for Rs. 14,750 as advance against this winding machine. The balance 90% value of the machine will be deferred over 5 years under I.D.B.I. Re-discounting Scheme. The amount of C.S.T., Excise duty etc. will be paid through bank as usual.

Please arrange immediate despatch of the machine by road. Please send us statement showing principal and interest amount under I.D.B.I. Scheme for balance value of 90% to enable us to arrange for bank guarantee in your favour. You informed us that the machine is ready and therefore, we request you to kindly arrange its immediate despatch. As required the contract duly signed by us is also returned herewith.

Please advise telegraphically despatch particulars to M/s National Insurance Co. Ltd., Division IV, 21 Daryagang Delhi (Telegraphic address : "RUBINSURE" DELHI) to insure the consignment against all transit risks from your warehouse to our warehouse for Rs. 1,60,000 and they will insure the consignment in our account as per our arrangement with them.

Kindly ensure immediate despatch of calculation sheet under I.D.B.I. Scheme.
Thanking you,

Yours faithfully,

Sd/-

For Technological Institute of Textiles.

Encl : Cheque and 3 copies of contract.

18. I have copiously quoted from the various letters addressed by the petitioner to various firms/suppliers to highlight the fact that the petitioner could not have addressed these letters as a Clerk. The learned Authorised Representative of the workman Shri Gupta contended that this was routine correspondence undertaken by the petitioner at the behest of the management and that these were simply written by him in his capacity as a Clerk. It is difficult to swallow this contention because no Clerk could address such letters to the employer of the respondent company. Besides the letters quoted above, there are many more letters the reading of which goes to show that the petitioner had not only initiative in the field of purchase of store but also that he could cancel, modify the orders placed, reject the goods intended before their arrival or after their arrival, offer concession to the suppliers for order their return. It was not routine correspondence by a Clerk as is sought to be made out by the learned counsel of the petitioner. Secondly the question of pay scale of the clerical staff of the respondent institute was referred to the Industrial Tribunal and an award was given. The clerical staff was placed in the scale of Rs 65-5-90-6-150/EB-74-210. The Tribunal further ordered that the graduates clerk shall have an initial start of Rs. 75. The pay scale of the petitioner was never fixed in that scale. The respondent company has placed on record nine complete chart regarding increments granted to the petitioner from the 1960 to

1979. These are contained in the sheet MW2/1. The petitioner was given a raise of Rs. 50 in July 1960, similarly raise in July 1963, a raise of Rs. 75 in January 1972, Rs. 115 in January 1974 and Rs. 100 in 1979. If the petitioner would have been in clerical cadre as stated by him in his statement before the Court, there was no question of his being given increments as given in the sheet Ex. MW-2/1. The pay scale of the petitioner was never fixed as per Textile Wage Board award also:

19. The respondent company has been maintaining separate register for the managerial/supervisory staff and other workmen. The said register is signed by the employee when they come for duty. The name of the petitioner figures in the register meant for the officers/supervisors or the managerial staff. The same has been signed by him. The extract of the same has been placed on record by the management, which is Ex. M-1.

20. The petitioner has also entered into an agreement on behalf of the respondent for providing railway siding from the main line to the respondent premises for transportation of coal. This agreement has been entered into by the petitioner on behalf of the respondent.

21. The petitioner has also been issuing orders for the import of the machinery on behalf of the respondent company beside handling its entire marine insurance work independently.

22. The learned Authorised Representative of the workman has drawn my attention to a few photostat copies of the instructions/advises issued to the petitioner by senior functionaries, copies of the same are Ex. W-1 to W-11. The petitioner has not examined the persons or officers, who issued these instructions to him. Even if, it be believed, that any such instructions were issued to him, how the petitioner could lay his hands upon them also defies imagination because these were instructions allegedly issued to him by certain officers of the respondent company but they do not in any way dilute the status of the petitioner or reduce him to the status of a clerk. It may be possible that the petitioner was also filling up some indents forms but that alone does not go to show that he was not functioning in a supervisory or administrative capacity. These indents forms are all typed at blank spaces and have been signed by the petitioner. The petitioner in the claim filed in the Court alleged that though he was designated as a Joint Store Keeper, he was performing the duties of primarily of a clerical nature. Even this fact was suppressed by him when he appeared in the Court as WW-1. In his overzeal to whittle down his status, he stated that he was working as a clerk in store department, though the management had designated him as a Joint Store Keeper, which fact came to his notice about ten years prior to his termination. He was signing the registers meant for the officers. He denied any knowledge about any award of the Industrial Tribunal, Punjab, which fixed the pay scale of the clerical staff of the respondent. He is also non-committal about the Textile Wage Board award. He also denied the proven fact that he was granted increments as granted to other officers. He denied the proven fact that he was signing the attendance register meant for the officers of the respondent company and asserted that he was signing the register meant for the clerks. He denied the fact that the respondent had entrusted to him marine insurance work. So, the statement of the petitioner is full of half truths, evasive denial, which were resorted to by him to bring himself within the ambit of term "workman". As already observed this Court has not been carried away by the nomenclature of the petitioner in holding that he is not a workman. The test which this Court has applied and which has been reiterated in numerous authorities cited above is regarding the primary, basic and dominant duties performed or assigned to him by the management which were of administrative and supervisory nature. There is no denying the fact that the petitioner was drawing more than Rs. 500 as salary (rather he was drawing Rs. 1,350 as per his own version on the date of his termination. So, there is no difficulty in holding that the petitioner is not a "workman" as defined in section 2(s) of the said Act and so, this issue goes against the petitioner.

Issue No. 2

23. As the jurisdictional issue regarding the petitioner being not a workman has gone against the petitioner, there was no necessity for this Court to decide this issue but in view of the dictum laid down in D.P. Maheshwari (Supra), I shall briefly touch upon this issue also. In case, the petitioner is not held to be a "workman" admittedly his termination was in violation of the provisions of section 25F of the said Act, because his termination will squarely fall within the ambit of term "retrenchment" as given in section 2(00) of the said Act. Admittedly no retrenchment compensation was paid to the petitioner by the respondent but even then, this Court will be very reluctant to reinstate the petitioner in view of the drastic cut in the labour force of the respondent institute. The respondent has placed on record full data of the labour force employed by it in the month of July, 1980 and now in the month of October, 1985. The total strength of the work force has gone down from 4,733 to 1,583 and the general staff from 503 to 198. This drastic cut of the labour force was necessitated because of dwindling production. Shri N.M. Jain, Factory Manager of the respondent institute stated that now the post of Joint Store-Keeper has been abolished. Under these circumstances, reinstatement of the petitioner would amount to saddling the employer with an employee whose services are not required because of sharp reduction in production and in lieu of reinstatement Court can award some compensation, which can be quantified, in case, findings of the Court on the jurisdictional issue are reversed.

Issue No. 3

24. Schedule III appended to section 7A of the said Act defines the matters which fall within the jurisdiction of Industrial Tribunals and Schedule II appended to Section 7 of the said Act defines the matters falling within

the jurisdiction of Labour Court. From III Schedule referred to above, the learned authorised representative of the respondent has drawn my attention to matter No. 10 which deals with retrenchment of workmen or closure of establishment. That would mean that in case workmen are retrenched en masse, the jurisdiction will be of the Industrial Tribunal and powers of the Labour Court extended, in all matters other than those specified in the III schedule. Since the case of the petitioner was a single case of retrenchment, the jurisdiction of the Labour Court does not stand ousted. So, on this plea the respondent must fall.

25. From the aforesaid discussion, there is no escape from the conclusion that since the petitioner is not a "workman" as defined in section 2(s) of the said Act, he cannot raise the present dispute and so, this reference is bad in law and answered accordingly, with no order as to cost.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Dated 11th January, 1986.

Endst. No. 154-81/179, dated 3rd February, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

The 6th March, 1986

No. 9/9/86-6Lab./1394.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award to Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Hindustan Wires Ltd., Plot No. 267-268, Sector 24, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, A
FARIDABAD

Reference No. 603/1983

between

SHRI KALIKA RAI, WORKMAN AND THE MANAGEMENT OF M/S. HINDUSTAN WIRES LTD., PLOT NO. 267-268, SECTOR 24, FARIDABAD

Present :—

Shri Darshan Singh, for the workman.

Shri R.C. Sharma, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the Shri Kalika Rai, workman and the management of M/s Hindustan Wires Ltd., Plot No. 267-268, Sector 24, Faridabad, to this Tribunal for adjudication :—

Whether the termination of service of Shri Kalika Rai was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement dated 19th September, 1984, alleged that he was employed in the respondent factory as machineman on 1st January, 1976, at the rate of Rs. 510 per month. It was further alleged that he was not allowed to join duty on 23rd May, 1983 and that one-sided and irregular enquiry was held against him and that his services were terminated illegally. It was, therefore, prayed that he be reinstated with full back wages.

3. The management in its written statement dated 22nd October, 1983, pleaded that the claimant was charge-sheeted on 12th February, 1983 because he misbehaved with the Supervisor and refused to carry out his instruction and also abused him in the presence of other workmen and employees. It was further pleaded that after considering his reply, the management deemed it necessary to hold the enquiry by Shri Devinder Singh, Advocate. It was pleaded that claimant raised certain points, which were duly replied by the management and the Enquiry Officer. It was pleaded that the enquiry held against the claimant was fair and

proper and the order of dismissal passed against the claimant was a legal one. It was pleaded that the claimant was gainfully employed.

3. The claimant in his rejoinder filed on 18th December, 1984, reiterated the pleas taken in the claim statement,

4. On the pleadings of the parties, the following issues were framed on 18th December, 1984:—

- (1) Whether the enquiry is fair and proper ? OPM
- (2) Whether the claimant is gainfully employed ? OPM
- (3) Whether the termination of service of Shri Kalika Rai was justified and in order ? If not, to what relief is he entitled ? OPM

5. It may be mentioned that the management has examined one witness and documents Ex. M-1 to M-26 have been tendered into evidence. The claimant has examined two witnesses and documents Ex. W-1 to W-11 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

6. The management has examined MW-1 Shri Devinder Singh, Advocate, who stated that he was appointed as Enquiry Officer,—*vide* letter Ex. M-1 to enquire into charges contained in the charge-sheet Ex. M-2. He further stated that the enquiry notice Ex. M-3 was issued by him and that Ex. M-4 contained the enquiry proceedings. He further stated that documents Ex. M-5 to M-20 were filed in the enquiry proceedings and that Ex. M-21 was the enquiry report submitted by him to the management. He also stated that Shri Maheshwar Singh was the representative of the claimant and that the claimant was given six opportunities to produce his defence, but he did not turn up. The documents Ex. M-22 to M-26 were tendered into evidence.

7. Shri Kalika Rai claimant WW-1 stated that he was employed in the respondent factory on 1st January, 1976, on permanent basis at Rs. 500 per month. He further stated that the enquiry was held against him and that Shri R.C. Bector was the representative of the management who was a Law graduate. He further stated that the letters, copies Ex. W-1 to W-9 were written by him and that Ex. W-10 and W-11 were the receipts. He further stated that Shri Maheshwar Singh was his representative in the enquiry and that no opportunity was given to him to cross-examine the witnesses and further that his statements were not recorded properly by the Enquiry Officer. He also stated that his request to change his representative was not acceded to and that no opportunity was given to him to produce his defence evidence. He also stated that his services were terminated due to his trade union activities. WW-2 Shri Maheshwar Singh stated that he was the representative of the claimant in the enquiry and that copy of the Standing Orders was not given to him. He further stated that the list of witnesses was not given to him and that no opportunity was given to the claimant to cross-examine the witnesses and their statements were not recorded properly, due to which he left the enquiry and that the claimant was not allowed to bring an outsider as his representative. He further stated that the evidence of the defence witnesses was not recorded and that the claimant had been removed due to his trade union activities.

8. A perusal of the above evidence would show that Ex. M-2 is the charge-sheet dated 12nd February 1983, in which it was alleged that the claimant was negligent and careless and that he indulged in acts subversive of discipline. It was also alleged that on 11th February, 1983, at about 2.30 p.m. in Shift B the claimant was on duty but he started gossiping in the Patenting Furnace Department with the other workers, who were doing work under the supervision of Mr. J. Khan Supervisor. It was also alleged that when Mr. Khan asked the claimant to go to his Machine and start his work, the claimant refused to carry out his lawful orders and gave a rude reply and used abusive and filthy language and behaved with him in a riotous and indecent manner in the presence of other workmen and left the place. It was further alleged that the claimant came at about 4.00 p.m. and on enquiry told his departmental head that he had gone to in search of maintenance fitter due to break-down of his machine. It was alleged that the machine was in order and it was started by other workman of the shift and the claimant thus gave false report to his departmental incharge and loitered in the factory aimlessly. He was, therefore, charged under clauses 17.2(1), 17.2(10) and 17.2(12) of the certified Standing Orders of the Company. Ex. M-4 contains the enquiry proceedings while Ex. M-21 is the report given by the Enquiry Officer. A perusal of these documents shows that the claimant was represented by Shri Maheshwar Singh during the enquiry and the management examined Shri Bector, management representative, Shri Jamalu Deen Khan, Furnace Supervisor, Shri Wazir Singh Dahiya, Shri Mohd. Aslam Khan Helper, Shri Ram Kripal Asstt. Operator and Shri Purushotam Singh worker. Shri Ramesh Jajodia was examined in chief on 16th March, 1983, but the claimant and his representative walked out from the place of enquiry, when the Enquiry Officer sent notices to the claimant for 29th March, 1983, 12th April, 1983, 23rd April, 1983, 26th April, 1983, 29th April, 1983 and 30th April, 1983. On 30th April, 1983, the claimant and his representative appeared

before the Enquiry Officer. Shri Ramesh Jajodia was produced by the management for cross-examination but the claimant and his representative left the place of enquiry on 30th April, 1983. The Enquiry Officer submitted his report finding that the claimant was guilty of all the charges levelled against him. The report of the Enquiry Officer is thus based on the evidence of 7 witnesses produced before him by the management.

9. It was argued by the representative of the claimant that the claimant was not allowed to bring an outsider as his representative. Reliance was placed on the ruling reported as **The Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others**, 1983-Lab. I.O 419. The ruling is distinguishable on facts because the same was given under the provisions of Regulation 12(8) of the Bombay Trust Employees Regulations, according to which, a claimant could appear through legal practitioner. In the present case, the copy of the Standing Orders of the respondent company has been produced and according to clause 19 of this order, the claimant could only bring a co-workman as his representative. In the present case the claimant suggested the name of Shri Maheshwar Singh in his letter, Ex. M-11 dated 23th February, 1983 and his request was acceded to, but later on he made his request to change the representative, but again in his latter dated 26th April, 1983, Ex. M-20 he made a prayer that he be allowed to be represented by Shri Maheshwar Singh. Consequently the claimant was represented by Shri Maheshwar Singh on his own request, who was then General Secretary of the Union, as stated by the claimant in his cross-examination.

10. It was then argued that no opportunity was given to claimant to produce defence evidence. The Enquiry Officer has stated that he gave six opportunities to the claimant to produce defence evidence, but in vain. As already mentioned above, the claimant left the place of enquiry on 16th March, 1983 when the last witness of the management, namely, Shri Ramesh Jajodia has to be cross-examined. There after notices were sent to the claimant for 29th March, 1983, 12th April, 1983, 23rd April, 1983, 26th April, 1983, 29th April, 1983 and 30th April, 1983. On 30th April, 1983, the claimant and his representative were present before the Enquiry Officer and Shri Ramesh Jajodia witness of the management was produced for cross-examination, but the claimant and his representative left the place of enquiry and did not participate in the enquiry proceedings. Consequently, the claimant was given six opportunities to cross-examine Shri Ramesh Jajodia, the last witness of the management, and produce defence evidence but he did not avail of the opportunities given to him.

11. It was argued that the copies of standing orders and the list of witnesses were not supplied to the claimant. The claimant had written the letter dated 28th February, 1983, Ex. M-11 in this respect, which was replied by the management, vide letter Ex.-M-12 dated 2nd March, 1983, mentioning therein that the certified Standing Orders could be inspected because the same were exhibited in the main Bulletin Board near the Security Office and that names of the management witnesses were very much indicative from the copy of the complaint. The letter written by the claimant was thus replied to by the management. The enquiry proceedings Ex. M-4 do not show that any objection was raised by the claimant in this respect when the proceedings were started by the Enquiry on 9th March, 1983.

12. It was argued that the charges levelled against the claimant were vague. The argument is without any force because all the material particulars have been given in the charge-sheet Ex. M-2 dated 12th February, 1983.

13. It was further argued that the statements of the witnesses produced by the management were not recorded properly by the Enquiry Officer. Enquiry proceedings Ex. M-4 show that six witnesses were examined-in-chief by the representative of the management and were cross-examined by the representative of the claimant. If the Enquiry Officer was not recording the statements properly, the claimant or his representative could raise objection in those proceedings.

14. In view of the above discussion, it is held that the enquiry is fair and proper. The issue is decided accordingly in favour of the management.

Issue No. 2:

14. No evidence has been led by the management on this issue and as such the management has failed to prove that the claimant is gainfully employed. The issue is decided accordingly against the management.

Issue No. 3:

15. As already mentioned above the enquiry was fair and proper and its findings are based on evidence. The representative of the claimant argued that the punishment awarded to the claimant was not in proportion to the misconduct attributed to the claimant. The submission of the representative of the claimant, on the other hand was that the punishment of dismissal was commensurate to the charges proved against the claimant. The charges against the claimant have already been mentioned above, which are contained in the charge-sheet Ex. M-2, which in a nutshell are to the effect that on 11th February, 1983, the claimant refused to comply with the orders passed by Mr. Khan Supervisor to run the machine and that the

claimant used abusive and filthy language and behaved in a riotous and indecent manner. For these acts, the punishment of dismissal is harsh, but at the same time, the claimant does not deserve reinstatement. Consequently, the ends of justice would be met if the impugned order of dismissal of the claimant is set aside and he is granted compensation equivalent to two years wages which he was drawing on 12th February, 1983 which was last date of his service in the factory. The award is passed accordingly.

R. N. BATRA,

Dated 7th February, 1986.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 102, dated 7th February, 1986

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-Lab/1536.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. Shree Ganesh Synthetics Pvt. Ltd., Plot No. 10, Sector 25, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 21/1982 & 23/1982

between

SHRI JAI RAM AND SHRI ROHTASH KUMAR WORKMEN AND THE MANAGEMENT OF M/S
SHREE GANESH SYNTHETICS PVT. LTD., PLOT NO. 10, SECTOR 25, FARIDABAD

Present:

Shri M.K. Bhandari for the workmen.

Shri S.D. Mishra along with Shri B. P. Gupta for the management.

AWARD

This award would dispose of two consolidated references bearing No. 21 of 1982 (Shri Jai Ram V/s Shree Ganesh Synthetics Pvt. Ltd., Plot No. 10, Sector 25, Faridabad) and No. 23 of 1982 (Shri Rohtash Kumar V/s. Shree Ganesh Synthetics Pvt. Ltd., Plot No. 10, Sector 25, Faridabad). The main proceedings have been held in reference No. 21/1982.

2. In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Jai Ram and Shri Rohtash Kumar Workmen and the Management of M/s Shree Ganesh Synthetics Pvt. Ltd., Plot No. 10, Sector 25, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Jai Ram and Shri Rohtash Kumar was justified and in order? If not, to what relief are they entitled?

3. Notices were issued to all the parties. In the claim statement dated 31st January, 1982 it was alleged that the claimants were employed as Weavers in 1977/1978 and were drawing Rs. 550 per month when their services were terminated. It was further alleged that on 9th April, 1981, the claimants reported for duty in shift-C, but the respondent stopped them at the gate of the factory along with another co-worker and that on 12th April, 1981, the respondent gave to the claimant suspension letters dated 10th April, 1981 while the chargesheet was given to them on 8th May, 1981. It was further alleged that the enquiry was held against the claimants, but no facilities were given to them and that enquiry was not held in a fair and proper manner and that the claimants were chargesheeted due to their trade union activities. It was further alleged that the termination of the services of the claimants were illegal and as such they were entitled to reinstatement with full back wages.

4. The Management in their written statement dated 4th July, 1982 pleaded that the claimants were piece-rated workmen. It was further pleaded that the claimants were suspended in consequence of having committed grave, serious and violent acts of misconduct through a proper order of suspension due to which they were chargesheeted. It was further pleaded that after considering the explanations given by the claimants, which were found to be unsatisfactory, the Management decided to hold a joint domestic enquiry against the claimants, who participated in the said enquiry and were given facilities which were required according to principles of natural justice. It was further alleged that the claimants were given full opportunity to lead defence evidence and to produce documents and that on receipt of the report of the Enquiry Officer, the claimants were dismissed. It was pleaded that the enquiry held against the claimants was fair and proper and that no disciplinary action was taken against the claimants due to their trade union activities.

5. The claimants in their rejoinder dated 30th August, 1982 reiterated the pleas taken in the claim statement.

6. On the pleadings of the parties, the following issues were framed on 30th August, 1982:—

(1) Whether the enquiry is fair and proper ? OPM

(2) Whether the termination of service of Shri Jai Ram and Rohtash Kumar was justified and in order ? If not, to what relief they are entitled to ?

7. It may be mentioned that the Management has examined two witnesses and documents Ex-M-1 to M-81 have been tendered into evidence. The claimants have examined four witnesses and the documents Ex. W-1 to W-39 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under—

Issue No. 1:

8. The Management has examined MW-1 Shri S.D. Mishra who stated that he was appointed as Enquiry Officer by the Management,—*vide* letter Ex. M-1 and that a joint enquiry was held by him against both the claimants as well as Shri Ramesh Kumar according to the principles of natural justice and that the document EX. M-2 contained the enquiry proceedings. He further stated that the claimants participated in the said enquiry throughout and were represented by their representative. He further stated that copies of day-to-day proceedings were given to the claimants and that documents Ex. M-3 to M-74 were tendered into evidence during the course of enquiry. He further stated that the claimants were given full opportunity to produce their defence evidence and they examined the witnesses and produced documents. He further stated that the enquiry report Ex. M-75 was submitted by him. MW-2 Shri Santosh Narain Tiwari, Director of the respondent Company stated that the show cause notice Ex. M-76 and M-77 were signed by Mr. S.P. Kangal, Manager and that Ex. M-78 and M-79 were the replies of the claimants to the said show cause notice. He further stated that the replies given by the claimants were found to be unsatisfactory and thereafter the order copies Ex. M-80 and M-81 were passed by him dismissing the claimants from service. He stated that he had seen the past record of the claimants before passing the dismissal orders which too was not satisfactory inasmuch as the claimants had apologised, *vide* documents Ex. M-72 and M-73.

9. Shri Jai Ram claimant WW-1 stated that he was employed as Weaver in the respondent factory and that his services were terminated without any ground. He further stated that on 9th April, 1981, he went to the factory at about 11.00 p.m. but the chowkidar did not permit him to go inside the factory and told him that strike was going on in the factory. He further stated that he waited outside the factory and that some other workers were also sitting outside. He further stated that the Management had turned out Shri Hem Raj, Ram Chander and Shri Raghbir due to which the strike took place and all the workmen had decided to go on strike, which continued upto 22nd April, 1981, when a number of meetings took place between the Union and the Management and that ultimately a settlement took place on 22nd April, 1981. He further stated that he was suspended before the strike and that the enquiry was held against him. He also stated that the list of witnesses was given to him but he did not remember if the copies of documents produced by the Management were given to him earlier or not. He further stated that the statements of witnesses were not recorded properly. The documents Ex. W-1 to W-21 were proved by this claimant. Shri Rohtas claimant also made a similar statement and the documents Ex. W-22 to W-30 were produced by him. WW-3 Shri Bishamber Chohan stated that workers were not allowed to go inside the factory by the Management on the pretext that they would damage the property and they waited outside the factory. He further stated that the Union had thought to go on strike and that the allegations against the claimants were not correct. WW-4 Shri Radha Krishan made a similar statement.

10. A perusal of the above evidence would show that the claimants were chargesheeted on 11th April, 1981,—*vide* chargesheets Ex. M-68 and M-70 alleging that on 9th April, 1981 at about 11.00 p.m. the claimants along with their co-workman Shri Ramesh jumped and crossed over the boundary wall of the Company and forcibly started threatening, intimidating, abusing and assaulting their fellow workmen to go on illegal strike. It was further alleged that due to these acts of the claimants, the safety of the establishment had been jeopardised and that the workmen of the company including the claimants remained on illegal strike from 9th April, 1981 to 21st April, 1981, causing heavy financial losses to the respondent company. It was further alleged that the

claimants committed acts of grave and serious misconduct in the past as well as violent acts for which they were let off on furnishing unconditional written appology to the Management and that the claimants had intentionally violated the agreement dated 16th January, 1980 under section 12(3) of the Industrial Disputes Act, 1947. It was alleged that acts of the claimants constituted very serious, grave and violent acts of misconduct and violated the provisions of State Model Standing Orders which were applicable to the respondent company Ex.M-2 contains the enquiry proceedings, while Ex. M-75 is the enquiry report submitted by the Enquiry Officer. A perusal of this document would show that the claimants participated in the enquiry throughout and were represented by their representative, Mr. Lal Babu Sharma. The Management examined their representative Mr. R.S. Sharma, Shri Ram Sakel Singh, Senior Security Guard, Shri Hind Lal, Shri Sant Singh Jobber, Sh. Gurmesh Sharma, Shift Incharge and Shri S.P. Kansal, Weaving Master-cum-Manager of the Company. Both the claimants appeared in the witness-box in defence and examined Shri Ramesh Kumar, Ravinder Nath Weaver, Shri Babu Ram Weaver, Vijay Bahadur and Shri Bishamber Chohan. The Enquiry Officer discussed the entire evidence and rejected the plea taken by the claimants and their witnesses that the Management had declared lock out due to which the workers were kept away from their work by the Management. The report of the enquiry officer is based on evidence and he found the claimants guilty of the charges levelled against them.

11. It was argued by the representative of the claimants that the charge-sheets should have been served on the claimants within a week's time of the alleged incident, but the same were served in the month of May, 1981. The incident took place on 9th April, 1981 and the chargesheets Ex. M-68 and M-70 were issued on 11th April, 1981. Ex. M-69 and M-71 contain the Hindi version of the chargesheets which were issued on 5th May, 1981 and it is mentioned in these documents that the claimants had refused to receive the chargesheets dated 11th April, 1981, due to which the respondent company pasted a copy of the chargesheets on the notice board and one copy of each chargesheet was sent to the claimants through the Union. It is thus apparent that the Management prepared the chargesheets well in time on 11th April, 1981, but the claimants refused to receive the same, due to which the Management had to send the same to the claimants through the Union. Hindi version of the chargesheets was given to the claimants later on 5th May, 1981. As such there was no delay in issuing the chargesheets.

12. It was then argued that the chargesheets were vague. Reliance was placed on the ruling reported as *State of Uttar Pradesh and Mohd. Sharif (dead) through L.Rs.* 1982-II-LLJ page 180, in which it is laid down that failure to mention particulars of date and time of alleged misconduct and certain other particulars in the chargesheet amounted to denial of reasonable opportunity to defend enquiry. The ruling is distinguishable on facts because in the present case all the material particulars have been given in the chargesheets, Ex. M-68 and M-70.

13. It was argued that the facilities demanded by the claimants were not given to them during the enquiry. The claimants wrote the letter copy Ex.M-25 on 9th May, 1981, which was also replied by the Management, —*vide* letter copy Ex. M-24. The claimants were informed that all the details of incident were mentioned in the chargesheet and that copy of the Standing Orders was available in the time office and that the claimants could inspect the same in that office at the gate of the factory. The Management thus gave the reply to both the demands raised by the claimants.

14. It was argued that the Management did not take any action against the other workers except the claimants and Shri Ramesh Kumar and thus the action of the Management was a malacious one. Ex. W-17 is the copy of the settlement dated 21st April, 1981 arrived at between the Management and the workers in which it is recited that the remaining workers expressed their regret due to which they were taken back on duty, but they agreed that disciplinary proceedings be continued against both the claimants as well as Shri Ramesh Kumar and the domestic enquiry be held against them according to the principles of natural justice. Consequently, the proceedings continued against the claimants as well as Shri Ramesh Kumar, while the remaining workers were taken on duty as per settlement copy Ex. W-17 and as such the argument has no force.

15. It was then argued that the findings given by the Enquiry Officer were not based on evidence. Reliance was placed on the ruling reported as *Rajinder Kumar Kindra and Delhi Administration through Secretary (Labour) and Others*, 1984-II-LLJ page 517. This ruling is distinguishable on facts because in the present case the findings are based on the evidence produced by the Management and defence version was rejected by the Enquiry Officer for which he gave cogent reasons in his report Ex. M-75.

16. It was then argued that the copy of the report of the Inquiry Officer was not supplied to the claimants. Reliance was placed on the ruling reported as *J.K Misra and Director General of Police, CRPF*, 1982-II-LLJ page 81. This ruling is distinguishable on facts because in that case a preliminary enquiry was held behind the back of the delinquent. No such contingency has arisen in the present case because the domestic enquiry was held in the presence of the claimants and their representatives. Second show cause notices were served on the claimants, copies Ex. M-76 and M-77, and on receipt of replies of the claimants Ex. M-78 and M-79, the Management passed the final orders against the claimants. In the ruling reported as *Suresh Koshy George, v. University of Kerala and others* AIR 1969 Supreme Court 198, it is laid down that even if a show cause notice is provided by law, from that it does not follow that a copy of the report on the basis of which the show cause notice is issued should be made available to the person proceeded against. The argument thus fails.

17. It was further argued that Mr. S. D. Mishra, Enquiry Officer was the legal adviser of the respondent company and as such he was not an independent Enquiry Officer. The argument does not carry any weight because in the ruling reported as *N. Rarichan V. R. K. Venk Neeraj another*, 973-Lab. I.C. 536, it is laid down that the enquiry is not vitiated on the ground that it is conducted by an employer's lawyer.

18. It was argued that suspicion could not be allowed to take the place of proof in a domestic enquiry. Reliance for this submission was placed on the ruling reported as *Divisional Manager, Life Insurance Corporation of India, Madurai and R. Sivasathyamurthy*, 1983-II-LLJ page 118. The ruling is distinguishable on facts because in the present case, the findings of the Enquiry Officer are based on evidence as already mentioned above.

19. It was then argued that the claimants had right to go on strike. In the ruling reported as *Dharam Singh Rajput and others V. Bank of India, Bombay and others*, 1979-Lab. I.G. 1979, it is laid down that right to strike is expressly recognised under the Industrial Disputes Act, but this right is to be exercised after complying with certain conditions regarding service of notice etc. and also after exhausting the intermediate and salutary remedy of conciliation proceedings. In the present case, these conditions have not been complied with and it was argued by the representative of the Management that strike was declared illegal by the concerned authorities.

20. In view of the above discussion, it is held that the enquiry was fair and proper. The issue is decided accordingly in favour of the Management.

Issue No. 2 :

21. It was argued by the representative of the claimant that the punishment given to the claimants was harsh and oppressive and that Industrial Tribunal can interfere with the punishment under the provisions of Section II-A of the Industrial Disputes Act, 1947 and further that in case of strike, no pay could be granted for no work period. Reliance for this submission was placed on the rulings reported as *Krishnatosh Dass Gupta and Union of India and others* 1980-ILLJ page 42, and *General Secretary, Mc Dowell Employees Association Varanasi and Mc Dowell & Co. Limited others*, 1977-I-LLJ, page 46. The representative of the Management, on the other hand, argued that punishment awarded to the claimant was in proportion to the misconduct proved against them. Reliance was placed on the ruling reported as *The Management of Shri Gopalkrishna Mills Pvt. Ltd., V. The Presiding Officer, Labour Court, Coimbatore and another*, 981-Lab. I.C., page 209. After hearing the arguments of the representatives of both the parties, it is apparent that the claimants and Shri Ramesh Kumar were charge sheeted and a joint domestic enquiry was held against all three of them. The Management has settled its dispute with Shri Ramesh Kumar and it was stated by the representative of the Management that Shri Ramesh Kumar had received the amount in full and final settlement of his claim and is no more in service. It obviously means that the Management paid some amount of compensation to Shri Ramesh Kumar and then settled the dispute with him. The case of these two claimants thus cannot be discriminated by the Management. Under this circumstances, the impugned orders of dismissal are set aside but their misconduct does not justify reinstatement and each claimant is granted compensation equivalent to two years' wages, which they were receiving on 8th August, 1981 which was the last date of their service in the Management. The award is passed accordingly.

Dated 10th February, 1986.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 111, dated 10th February, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-6 Lab./2080.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Imperial Carbon and Ceramics, Plot No. 175, Sector 24, Faridabad.—

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 11/1984
between

SMT. SONDEI WORKMAN AND THE MANAGEMENT OF M/S. IMPERIAL CARBON AND CERAMICS, PLOT NO. 175, SECTOR 24, FARIDABAD

Present:—

Shri Darshan Singh for the workman.

Shri Jagbir Singh Badhana for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 14 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Smt. Sondei, workman and the management of M/s. Imperial Carbon and Ceramics, Plot No. 175, Sector 24, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Smt. Sondei was justified and in order? If not, to what relief is she entitled?

2. Notices were issued to both the parties. In the claim statement, dated 4th July, 1984, it was alleged that the claimant was employed in the factory in January, 1981, as Helper and that she was not allowed to join duty even after lock out declared by the Management was lifted and that the Management had agreed to take her back on duty. It was further alleged that termination of services of the claimant was illegal and as such she was entitled to reinstatement with full back wages.

3. The Management in its written statement, dated 3rd December, 1984, pleaded that the reference was premature and that no industrial-dispute existed between the parties. It was further pleaded that Smt. Sondei was appointed in the month of February, 1982, at the rate of Rs. 11.65 per day as casual helper and that the respondent closed their unit temporarily on 13th April, 1982 and later on opened the factory in July, 1983.

4. The claimant in her rejoinder filed on 31st December, 1985 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 31st December, 1984:—

(1) Whether the reference is premature ? OPM

(2) Whether there is no industrial dispute as pleaded ? OPM

(3) Whether the termination of service of Smt. Sondei was justified and in order ? If not, to what relief is she entitled ? OPM

6. It may be mentioned that the Management has examined one witness and documents Ex. M-1 to M-25 have been tendered into evidence. The claimant has appeared in the witness box. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1:

7. MW-1 Shri Paras Ram Singh, Supervisor in the respondent factory, stated that the claimant joined service on 15th February, 1982 on daily wages as helper and that the factory was closed on 13th April, 1982 and was restarted on 7th June, 1983. He further stated that the name of the claimant was struck off on 6th January, 1984. The demand notice was given by the claimant on 21st September, 1983 when the factory was closed on 13th April, 1982. The question of keeping the name of the claimant on the muster rolls did not arise. As such the plea taken by the Management name of the claimant remained on the rolls even after the closure of the factory cannot be accepted and as such the claimant was not in service of the Management on 21st September, 1983. The rulings reported as *M/s. India Tourism Development Corporation New Delhi versus Delhi Administration, Delhi and others*, 1982 Lab.I.O. 1309, and *Sitaram Vishnu Shirodhari and the Administrator, Government of Goa and others*, 1985-I-LLJ, page 480, are distinguishable on facts because it is laid therein that Industrial Tribunal cannot go beyond the reference. These rulings are, therefore, not relevant for this issue. In view of the above discussion, the reference is not premature. This issue is decided accordingly against the Management.

Issue No. 2:

8. By giving the demand notice, the industrial dispute was raised by the claimant. There is no evidence in rebuttal. Consequently, the Management has failed to prove that there was no industrial dispute between the parties. The issue is decided accordingly against the Management.

Issue No. 3:

9. MW-1 Shri Paras Ram Singh, Supervisor in the respondent factory, stated that the claimant joined service on 15th February, 1982 at the rate of Rs 11.65 paise per day as helper and that the Company was closed 13th April, 1982,—*vide* notice Ex. M-1 and it was restarted on 7th June, 1983,—*vide* settlement Ex. M-2. In cross-examination he stated that the claimant was working prior to closure of the factory. The claimant Smt. Sondei took the plea that she was employed on 1st January, 1981 and her services were terminated on 13th February, 1982. No document has been filed by the claimant to prove that she joined service on 1st January, 1981 and was laid off on 13th February, 1982. The witness of the Management has clearly stated that the claimant joined duty on 15th February, 1982 and worked upto 13th April, 1982 when the factory was closed. Consequently, the claimant had not completed 240 days continuous service, as such the provisions of Section 25-F of the Industrial Disputes Act, 1947 are not attracted in her case.

10. The only dispute now left between the parties relates to the recalling of the claimant to join duty. The Management has produced the letters, copies Ex. M-3 to M-12, and postal receipts, Ex. M-13 to M-22 and M-25, to show that the claimant was asked to join duty when the factory was restarted in June, 1983, but the claimant did not join duty. WW-1 Smt. Sondei claimant stated that the letters were addressed at her home address and not on the address where she was residing with her husband. The letters had M-3 to M-6 were written at the home address of the claimant and thereafter she gave the demand notice on 21st March, 1983 in which the different

address was given. Consequently, the remaining letters Ex. M-7 to M-12 could be written by the Management on the fresh address given by the claimant. Under these circumstances, the Management should comply with the provisions of Section 25-H of the Industrial Disputes Act, 1947 and give the job to the claimant on preferential basis when she reports for duty as provided in Section 25-H of the Industrial Disputes Act, 1947. The award is passed accordingly.

Dated 17th February, 1986.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 131, dated 25th February, 1986.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment, Departments, Chandigarh, as required under Sections 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 7th March, 1986

No. 9/6/86-6 Lab./1384.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of the Haryana Roadways, Kaithal:—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 179 of 1984
(Old No. 185 of 1982)

SHRI JAGIR SINGH WORKMAN AND THE MANAGEMENT OF THE HARYANA ROADWAYS, KAITHAL

Present:—

Shri T. Singh for the workman.

Shri A.R. Goyal for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred dispute between Shri Jagir Singh and the G.M., Haryana Roadways, Kaithal to Labour Court, Faridabad. The terms of reference were as under:

Whether the termination of services of Shri Jagir Singh, workman, was justified and in order? If not, to what relief is he entitled?

In April, 1984 Labour Court was constituted at Ambala; thereafter, this reference, was received by transfer:—

Under the orders of Government of Haryana.

Shri Jagir Singh in his statement of claim alleged that he was employed as a Conductor. His services were illegally terminated because no proper inquiry was conducted by the Inquiry officer. He was not given an opportunity of being heard.

Management refuted the allegations of workman and strongly contended that a proper enquiry was conducted; workman was afforded an opportunity to cross-examine the witness and was also afforded an opportunity to lead defence evidence. Workman was also heard in person by G.M. Roadways before passing his termination order. It was further agitated that the reference is bad and workman is not at all entitled to any relief.

Shri Jagir Singh had gone in appeal to Transport Commissioner against the order of the G.M., Roadways, Kaithal. Transport Commissioner, Haryana, made observations that the enquiry was conducted in proper and fair manner but he felt that punishment of termination inflicted by G.M., Roadways, Kaithal upon the workman Jagir Singh is harsh. So he passed order of his reinstatement but he was debarred from his back wages.

No doubt that the T.C. took a lenient view for reinstating the workman but he was in error where withholding the arrears of his back wages because the law on this point is otherwise. If the management was to debar

the workman from making payment of back wages. In these circumstances the management was bound to establish that workman remained gainfully employed during the period which he remained out of service of G.M., Roadways, Kaithal. But there is no such finding or observations in the order of T.C., Haryana, dated 24th September, 1984. If the file which is before me is to be gone through carefully it also does not disclose that workman remained employed somewhere else other than the service of respondent-management which shows that workman is entitled to his back wages for the period in which he remained out of service of management.

I am fortified by judicial pronouncement 1955 West Bengal page 307 in a case titled Shri P.C. Majtns between Dharindra Vishnu and Commanding Officer, Engineering Stores Departments, Government of India. It was observed that the discharge follows by reinstatement must be held to be not discharge at all and continuity of service being there the employee must be held to be entitled to get his wages for the intervening period. The another law on this point is 1976 S.L.W.R. Harbhajan *versus* Assistant Labour Commissioner and others page 95 Read Note-B under Industrial Disputes, Act, 1947, section 10 and section 25(E) if the dismissal/retrenchment order is set aside and workman has ordered to be reinstated with continuity of service. In these circumstances workman is entitled to back wages unless extraordinary circumstances disentitling the workman exist.

In view of my above discussions and case laws relied upon by me, I am of the confirmed opinion that the learned T.C., Haryana reinstated Jagir Singh with continuity in service in those circumstances he could not with held his back wages because his order is silent about withholding of back wages because neither there is any evidence against the workman being remained gainfully employed during the period in which he remained out of service nor extraordinary circumstances disentitling the workman existed. It resulted that workman is entitled to back wages for the period during which he remained out of service. Regarding the controversy between the parties, I pass award accordingly.

Dated the 8th January, 1986.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 64, dated 8th January, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No 9/6/86-6Lab./1433.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of Haryana Seeds Development Corporation Ltd., Karnal :—

IN THE COURT OF SHRI V. P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT
AMBALA

Ref. No. 277 of 1984

(Old No. 218 of 1980)

SHRI SURAT SINGH, WORKMAN AND THE MANAGEMENT OF THE HARYANA
SEEDS DEVELOPMENT CORPORATION LTD., KARNAL

Present :—

Shri O. P. Daryal for the workman.

Shri S. Kaushal for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of the powers conferred by clause (C) of sub-section(1) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Surat Singh, workman and the Haryana Seeds Development Corporation Ltd., Karnal, to Labour Court Rohtak. The terms of the reference are as under:

Whether the termination of services of Shri Surat Singh, workman was justified and in order; if not, to what relief is he entitled?"

In April 1984, Labour Court was constituted at Ambala, so this reference, was received by transfer.

Surat Singh, workman alleged that he was appointed as a Clerk on 16th January, 1976 in Haryana Seeds Development Corporation Ltd., Karnal. His services were terminated on 30th January, 1980 without any notice and reason by the respondent-management. At the time of termination of the service he used to get Rs. 9.50 per day. He has prayed for his reinstatement, with continuity in service and with back wages.

Respondent-management contested the dispute and contended that workman Surat Singh was in the employment of respondent on daily wages. He left his job voluntarily on 31st January, 1980 and thereafter he did not report on duty. It clearly shows that workman abandoned his employment of his own and out of his sweet will. Thereafter, he filed demand notice on 7th March, 1980 which was consequently withdrawn by him on 11th July, 1980, in spite of that the Government referred this dispute to this Court for adjudication. Management repeatedly urged that in fact services of Surat Singh were never terminated by the management, but in fact he left his job voluntarily and joined service with Messrs Yogesh Cold Storage and Industry, G. T. Road Ganaur in district Sonepat continuously for about four months. He remained silent and thereafter; he served demand notice.

On the pleadings of the parties the following issues were framed by my learned predecessors for the just decision of this case:—

Issues :

1. Whether the reference is bad in law as per the reasons given in Para No. 124 of the preliminary objection ? O.P.M.
2. As per terms of reference.

I have heard Shri O.P. Daryal, A. R. of workman and Shri Surinder Kaushal, A. R. of management and have perused the evidence as well as written arguments available on the file. My parawise findings are as under :—

Issue No. 1

Regarding preliminary objection No. 1, I would like to say that from letter mark-A, dated the 16th January, 1976 it is evident that Surat Singh was employed by Shri H. P. Singh, Regional Manager of Respondent, so he rightly made R. M. as a party to this litigation so this objection of the respondent-management is turned down.

Regarding preliminary objection No. 2, I would like to say on the basis of file that workman Surat Singh abandoned his service and he was not at all terminated. Because voucher of Yogesh Cold Storage, Ganaur, district Sonepat shows that he himself left the service of Haryana Seeds Development Corporation, Karnal. Vouchers Exhibit M-1/A clearly shows that during the month of February, he served Yogesh Cold Storage and industry and received Rs. 67 for five days office salary from 2nd February, 1980 to 6th February, 1980. When signatures on revenue stamp at mark-A on Exhibit M-1 were put to the workman at that time he could not afford to deny the same.

Regarding preliminary objection No. 3, I would like to say that in fact workman absented from 31st January, 1980 from the service of respondent-management which shows services of workman were never terminated by the respondent-management but in fact he himself abandoned service of Haryana Seeds Development Corporation Ltd., Karnal.

Regarding preliminary objection No. 4, I would reach at the conclusion on the basis of the evidence that demand notice was issued by Surat Singh, management on 7th March, 1980 and later on it was withdrawn by him on 11th July, 1980. But, in spite of the fact the Government referred this matter for adjudication to this Court. Once the demand notice withdrawn in these circumstances the claim of workman automatically stands rejected.

In view of my above conclusion issue No. 1 is answered accordingly.

Issue No. 2

In support of this issue management examined Shri Sham Sunder, Clerk of Yogesh Gold Storage Ganaur, district Sonepat as MW-1. He stated on oath that he has brought an original vouchers of his firm Exhibit M-1. According to that Surat Singh received wages for five days, MW-2 Shri M.S. Daiya, R.M. stated that he remained as R.M. posted at Karnal from November, 1977 to March, 1980. Respondent had been engaged casual labour of daily wages at the rates prescribed by D. C., Karnal and similarly Surat Singh was employed on daily wages basis. His services were in fact never terminated he worked with Respondent only upto, 30th January, 1980 and thereafter ; he absented on 31st January, 1980.

MW-3 Bayant Singh stated that he has brought the appointment letter of regular employees which is Exhibit M-3/1. Applicant was getting Rs. 9.50 per day as a daily paid employee. Vouchers Exhibit M-3/2 bear signature of Shri Surat Singh,—*vide* which he received his last payment from the respondent on 8th February, 1980.

Workman examined in his favour WW-1 Shri Gurmeet Singh, Clerk and he himself examined as WW-2 Surat Singh stated that he worked up to 31st January, 1980 in the employment of the respondent-management and thereafter R. M., Karnal did not allow him to report on duty he also stated that he never joined the service of Yogesh Cold Storage, Ganaur and issued demand notice to respondent-management on 7th March, 1980.

In view of the above evidence of the parties, one fact is clear that Surat Singh served the respondent-management for more than 240 days. The respondent-management is covered in definition of industry but the evidence which is available on the file shows that on 30th January, 1980 Surat Singh left service of respondent-management for his better prospects of service, and joined service of Messrs Yogesh Cold Storage (District Sonipat). The later fact is proved from original Vouchers Exhibit M-1/A which shows that Surat Singh worked for five days in the employment of Messrs Yogesh Cold Storage and received wages from them for this period. On the other hand the case of the respondent-management is very clear when they stated that after 30th January, 1980 Surat Singh came in their office on 8th February, 1980 and received payment for the wages of the month of January, 1980 and thereafter he never reported for duty and issued demand notice to the management through the conciliation officer.

So the evidence referred above clearly shows that it is a case of abandonment of service by Surat Singh and not a case of termination. There is no evidence on the file from the side of Surat Singh that how and why the records of Yogesh Cold Storage were got fabricated by the respondent-management to harm him, in the absence of the same it is evident that there is no termination of services of Surat Singh by respondent-management and in fact it is an abandonment of service by Surat Singh himself.

Regarding the controversy between the parties, I pass award accordingly.

Dated the 16th January, 1986.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 200, dated the 20th January, 1986.

Forwarded (Four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the I. D. Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/6/86-6Lab./1439.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947(Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. Municipal Committee, Radaur (Kurukshetra) :—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Ref. No. 210 of 1984
(Old No. 85 of 1982).

SHRI MALOOK SINGH, WORKMAN AND THE MANAGEMENT OF THE MESSRS MUNICIPAL COMMITTEE, RADAUR(KURUKSHETRA)

Present :—

Shri Madhu Sudan for the workman.
Shri J.R. Sharma for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 originally referred dispute between Shri Malook Singh and the Messrs Municipal Committee, Radaur to Labour Court, Faridabad. The terms of the reference are as under :—

"Whether the termination of services of Shri Malook Singh, workman was justified and in order, if not, to what relief is he entitled?"

On constitution of Labour Court, in April, 1984, at Ambala, so this reference was received by transfer.

Workman through his demand of claim alleged that he was appointed as a Octroi Moharrir(OTS) and in that capacity he served the respondent management for 10 years. On 1st January, 1974 the post of Octroi Moharrir was made permanent. Thereafter his services were terminated by the respondent because he was General Secretary of the union. He prayed that he be reinstated with continuity in service as well as with full back wages.

Respondent management contested the reference and contended that the post of Octroi Moharrir of Shri Malook Singh was abolished under the orders of D.C. Kurukshetra of 16th April, 1981. Shri Malook Singh was Junior most so his services were terminated. Notice was issued to him and his three months pay was paid to him. It was contended that Malook Singh refused to accept notice thereafter he was served by way of substituted service that is by means of pasting a copy of notice at his door and his three months, pay was deposited in his Central Bank account. It was also contended that none was employed in place of Malook Singh and no Octroi Moharrir post is lying vacant. Malook Singh filed demand notice which was rejected by the Conciliation Officer.

On the pleadings of the parties the following issues were framed :

Issues

1. As per reference.

During the pendency of this reference the Government of Haryana accepted the representation of Shri Malook Singh on the basis of same orders were issued to D.C. Kurukshetra that Malook Singh be re-employed. On the basis of those orders D.C. Kurukshetra got sanctioned the post of Octroi Moharrir and re-employed him.

After the re-employment of Malook Singh in the service of respondent management now a limited question remains to be answered that is whether Malook Singh is entitled to his back wages from 6th May, 1981 to 23rd June, 1982 or not. In the case in hand the services of Shri Malook Singh were terminated due to abolition of post of Octroi Moharrir in other words due to paucity of work. But later on Government thought it proper to create the post of Octroi Moharrir and order re-employment of Shri Malook Singh. One fact is also clear from the pleadings and evidence of the parties that three months notice was issued for terminating this services of Shri Malook Singh. His service was got effected by way of pasting the notice at his doors. It is also in the evidence that three months pay in lieu of notice in advance was deposited in his bank account which means that he has already received pay of three months that is from 6th May, 1981 to 6th August, 1981 and the pay for the residuary period he is also entitled to get because his post was abolished by the Government and later on it was restored by the Government, although there is no specific date of restoration of his post is mentioned in the orders of the Government. In these circumstances when such an anomaly crops up in that eventuality a view favourable to workman should be taken. I would like to refer to judicial pronouncement in those case the workman was reinstated with the benefit of continuity in services. However, the back wages were withhold by the management but the Hon. court observed such an withholding of back wages of the workman is against the law. Such findings are available in 1955-II LLJ page 306 West Bengal Dharendra Vishnu versus Commanding Officer, Engineering Stores Department, Government of India and 1976 SLWR page 95 Punjab and Haryana High Court in case Harbhajan Singh Filter and others Versus Assistant Labour Commissioner and others.

In the above mentioned circumstances I am of the considered view that there is no sufficient evidence on the file that in what circumstances services of Shri Malook Singh were terminated and thereafter his services were restored by the Government. D.C. Kurukshetra after obtaining sanction from the Government reinstated Shri Malook Singh, so in these circumstances Shri Malook Singh applicant is entitled to continuity in service and his back wages.

I pass award regarding the controversy between the parties accordingly.

Dated : 22nd January, 1986

V.P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Endst No. 209, dated 29th January, 1986

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.